

18(New). The method of Claim 7 wherein said transparent cap comprises glass.

REMARKS

The Examiner rejected Claim 7 under 35 U.S.C. 102(b) as being unpatentable under 35 U.S.C. 103(a) as being obvious over Kawae, *et al* (hereafter "Kawae") (US 2002/008 0501). Applicant traverses this rejection. "The mere fact that a reference could be modified to produce the patented invention would not make the modification obvious unless it is suggested by the prior art." (*Libbey-Owens-Ford v. BOC Group*, 4 USPQ 2d 1097, 1103). "When the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the reference" (*In re Rijckaert*, 28 USPQ2d, 1955, 1957).

With reference to Claim 7, the Examiner looks to Kawae as disclosing an LED that meets the limitation of the claim except for having a spherical cap of constant thickness. The Examiner state that Kawae in Figure 10 shows an LED having a spherical surface of constant thickness, and hence, it would be obvious to use the spherical surface shown in Figure 10 in the device shown in Figure 8 because it would allow one to alter the direction in which the light leaving the LED travels.

First, the Examiner has not pointed to any teaching in Kawae that the layer shown in Figure 10 has constant thickness. It should be noted that Kawae teaches that the device shown in Figure 10 is prior art. While the drawing appears to show such a layer, there is no statement in the text to that effect. "It is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue" *Nystrom v. Trex Co.*, 71 USPQ2D 1241, 1250.

Second, if anything, Kawae teaches away from such an embodiment as evidenced by the other embodiments of the invention disclosed in the reference, particularly the embodiment shown in Figure 7.

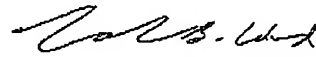
Third, the Examiner's reason for making the modification is flawed. As pointed out previously, a spherical surface of constant thickness has no lens properties, and hence, does

not alter the direction of light. Accordingly, Applicant submits that the Examiner has not made a *prima facie* case for obviousness with respect to Claim 7.

The above amendments add two new claims. Applicant submits that these claims are supported in the specification.

I hereby certify that this paper is being sent by FAX to 571-273-8300.

Respectfully Submitted,



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